

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:19CR65-GCM**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AUSTIN TYLER LITCHFIELD,

Defendant.

ORDER

This matter is before the Court on Defendant Litchfield's Motion for Reduced Sentence under Amendment 821 to the United States Sentencing Guidelines and 18 U.S.C. § 3582(c)(2). (Doc. No. 231). Upon careful consideration of the arguments submitted by the parties, Defendant's Motion is **DENIED**.

I. BACKGROUND

In September of 2019 Mr. Litchfield was indicted and charged with conspiracy to distribute and possess with intent to distribute at least 500 grams of a methamphetamine mixture, 21 U.S.C. § 846; and possessing with intent to distribute at least 50 grams of a methamphetamine mixture, 21 U.S.C. § 841(a)(1). (Doc. No. 150 at 1–2). He subsequently entered into a plea agreement with the United States and pleaded guilty to both offenses. (*Id.*, Doc. 100 ¶ 1). Litchfield admitted that at least 4.5 kilograms of actual methamphetamine and 45 kilograms of a methamphetamine mixture were reasonably foreseeable to him. (*Id.*, Doc. 100 ¶ 8(a)). Litchfield also agreed that he should receive a two-offense-level weapon enhancement. (*Id.*, Doc. 100 ¶ 8(b)).

The United States Probation Office submitted a presentence report and calculated a total offense level of 37. (*Id.*, Doc. 150 ¶ 32). This total offense level included a two-offense-level increase because Litchfield possessed a firearm in connection with his drug-trafficking offense. (*Id.*, Doc. 150 ¶ 24). The probation office assigned Litchfield zero criminal-history points and found that the Sentencing Guidelines advised a sentence of between 210 and 262 months in prison based on a total offense level of 37 and a criminal-history category of I. (*Id.*, Doc. 150 ¶¶ 41, 66). This Court sentenced Litchfield to a downward-variance sentence of 144 months in prison. (*Id.*, Doc. 201 at 2). Litchfield now asks this Court to reduce his sentence based on Amendment 821 to the Sentencing Guidelines.

II. DISCUSSION

Amendment 821 to the Sentencing Guidelines made two changes to chapter 4 of the Sentencing Guidelines related to a defendant's criminal history. *See* U.S.S.G. amend. 821. The Sentencing Commission has made Part A and Part B, Subpart 1, of Amendment 821 retroactively applicable, authorizing eligible defendants to seek a discretionary sentence reduction under 18 U.S.C. § 3582(c)(2). U.S.S.G. amend. 825; *see* U.S.S.G. § 1B1.10(d).

Part A of the amendment alters Sentencing Guidelines § 4A1.1 to strike the two status points previously assessed under § 4A1.1(d) for defendants who committed their offense while under any criminal-justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. *Id.* pt. A. Part A adds a new subsection (e) that adds one criminal-history point for any defendant who receives 7 or more points and who committed his offense while under any criminal-justice sentence as described above. *Id.*

Part B, Subpart 1, of Amendment 821 adds a new guideline provision to chapter four, U.S.S.G. § 4C1.1. This new guideline authorizes a two-offense-level decrease for certain

defendants who have zero criminal-history points. U.S.S.G. amend. 821 pt. B. A defendant is not eligible for this reduction if (1) he received a terrorism adjustment under U.S.S.G. § 3A1.4; (2) he used violence or credible threats of violence in connection with his offense; (3) the offense resulted in death or serious bodily injury; (4) the offense was a sex offense; (5) he personally caused substantial financial hardship; (6) he possessed, received, purchased, transported, transferred, sold, or otherwise disposed of a firearm or other dangerous weapon in connection with the offense; (7) the offense was an offense involving individual rights covered by U.S.S.G. 2H1.1; (8) he received a hate-crime-motivation or vulnerable-victim adjustment, U.S.S.G. § 3A1.1; (9) he was convicted of a serious-human-rights offense, U.S.S.G. § 3A1.5; (10) he received an aggravating-role adjustment, U.S.S.G. § 3B1.1; or (11) he was engaged in a continuing criminal enterprise as defined in 18 U.S.C. § 848. *Id.*

For defendants who meet the requirements of Amendment 821, Sentencing Guidelines § 1B1.10 governs eligibility for a sentence reduction. Section 1B1.10(a)(1) authorizes a district court generally to reduce a defendant's sentence in any case in which a defendant is serving a term of imprisonment and the guideline range applicable to the defendant "has subsequently been lowered as a result" of a retroactively applicable amendment to the Guidelines." A defendant is not eligible for a sentence reduction if the retroactively applicable amendment "does not have the effect of lowering the defendant's applicable guideline range." U.S.S.G. § 1B1.10(a)(2)(B). A court is limited to a reduction to the bottom of the amended guideline range, after calculating the range that would have applied had the guideline amendment been in effect when the defendant was sentenced. *Id.* § 1B1.10(b)(2). In calculating the amended range, "the court shall substitute only" the retroactively applicable guideline amendment and "leave all other guideline application decisions unaffected." *Id.* § 1B1.10(b)(1). If the defendant received a sentence below the

applicable guideline range based on a motion filed by the United States for substantial assistance, the court may reduce the defendant's sentence to a term "comparably less than the amended guideline range." *Id.* § 1B1.10(b)(2)(B). Under no circumstances shall a defendant's sentence be reduced to a term less than the term he has already served. *Id.* § 1B1.10(b)(2)(C).

The Court finds that the Defendant is not eligible for a sentence reduction under Amendment 821. While Litchfield was a zero- point offender, he also possessed a firearm in connection with his drug-trafficking offense. Accordingly, he is disqualified for a reduction in sentence under Amendment 821.

IT IS THEREFORE ORDERED that Defendant's Motion for Reduced Sentence under Amendment 821 to the United States Sentencing Guidelines and 18 U.S.C. § 3582(c)(2) (Doc. No. 231) is hereby **DENIED**.

Signed: August 5, 2024

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

